

BOARD OF BARBERING AND COSMETOLOGY

ADDENDUM TO FINAL STATEMENT OF REASONS

(May 25, 2007)

Hearing Date: February 26, 2007

Section(s) Affected: 980.1, 980.2, and 980.3

Updated Information

The Initial Statement of Reasons is included in the file. No changes have been made which would warrant a change to the informative digest contained in the Notice for sections 980.1, 980.2, and 980. However, the Factual Basis in the Initial Statement of Reasons is amended to include the following information related to the establishment and composition of the Working Group on Footspa Safety that was convened by the Department of Consumer Affairs:

Origin of Working Group on Footspa Safety

In 2005, AB 1263 (Yee) was introduced in the California Assembly. The bill would have set minimum safety standards for pedicure equipment and required BBC to adopt regulations regarding proper cleaning and disinfection of pedicure equipment. The bill was vetoed by Governor Arnold Schwarzenegger in October 2005, however, in his veto message the Governor directed:

“ . . . the Department of Consumer Affairs to convene a working group consisting of BBC, county health officials, consumer groups, pedicure equipment manufacturers and other interested parties, to determine how to improve the safety of pedicure equipment and ensure appropriate consumer protection.”

In late 2005, at the direction of Department of Consumer Affairs (DCA) Director Charlene Zettel, DCA staff began contacting stakeholders and compiling information the group would need for its work. Stakeholders identified included DCA's Board of Barbering and Cosmetology (BBC), trade schools, salon owners, footspa manufacturers, Environmental Protection Agency (EPA) officials and health experts. Upon inviting individuals to join the Working Group, DCA Director Zettel identified the Working Group's main tasks to include :

- A review statutory and regulatory provisions regarding standards and protocol for cleaning and disinfecting footspas. Determine the areas that need to be improved for ensure consumer safety.
- A review of BBC's existing inspection and enforcement program and determine areas in need of improvement.

- A review current school curricula regarding cleaning and disinfection of footspas and determine areas in need of improvement.
- A review current education and outreach materials for pedicure patrons and existing licensees to determine the most efficient methods.
- Summarizing its findings and provide suggestions to DCA and BBC

At the invitation DCA Director Zettel, the following individuals accepted to serve on the Working Group on Footspa Safety (hereinafter referred to as the “Working Group”) :

1. Leah Alberto, Jerry Lee Beauty College
2. Marcia Bonawitz, Instructor, Sacramento City College
2. Adam Borut, Vice President, European Touch
3. Paul Bryson, Director of Research and Development, O.P.I. Products, Inc.
4. DeeDee Carlson, San Francisco Institute of Esthetics and Cosmetology
5. Jim Casteel, Vice President, AmeriSpa
6. Joyce Chung, Epidemiologist, Santa Clara County Health Department
7. Sara Cody, Deputy Health Officer, Santa Clara County Health Department
8. Gary Duke, Legal Counsel to DCA / BBC.
9. Richard Hedges, Vice President, BBC
10. Russ Heimerich, Chief, DCA Office of Public Affairs
11. James Jacobs, Supervising Inspector, BBC
12. Denise Johnson, Assistant Executive Officer, BBC
13. Fred Jones, Legal Counsel and Lobbyist, Professional Beauty Federation of California
14. Theresa Kimura-Yip, Enforcement Manager, BBC
15. Nancy King, Nail Care Consulting
16. John Lockamy, Jerry Lee Beauty College
17. Travis McCann, Manager of Customer Satisfaction Improvement Unit, DCA
18. Alex Ninh, National Sales Manager, AmeriSpa
19. Stephen Rhoads, Lobbyist, Strategic Advocates
20. Dustin Rodriguez, Cosmetologist and Establishment Owner
21. Doug Schoon, Vice President for Science and Technology, Creative Nail Design, Inc.
22. Julie Taylor, Legislative Analyst, Division of Legislative & Regulatory Review, DCA
23. Marcie Tidd, U.S. Environmental Protection Agency
24. Kristin Triepke, Deputy Director, Division of Legislative & Regulatory Review, DCA
25. Jerry Tyler, President, BBC
26. Kristy Underwood, Executive Officer, BBC
27. Candi Zizek, Health Program Specialist, California Department of Health Services

The group met five times in early 2006 – on February 2, February 15, March 15, April 5 and April 27. After the final meeting, work continued via telephone and e-mail, leading to the final recommendations. On June 27, 2006, the DCA Director Zettel unveiled a list of recommendations for cleaning and disinfecting pedicure equipment. With regard to health and safety issues related to the cleaning and disinfecting of pedicure and footspa equipment, the Working Group extensively relied on the knowledge and expertise of the officials from the California Department of Health Services, local county health officials and representatives from the U.S. Environmental Protection Agency and industry stakeholders..

These recommendations were submitted to the BBC for its consideration in order to incorporate the recommendations into BBC's regulations related to cleaning and disinfecting footspas.

Small Business Impact

In the Initial Statement of Reasons, the BBC concluded that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business. Nevertheless, this action may have an adverse economic impact on small businesses since adherence to the regulation's requirements would necessitate increased costs for using a liquid disinfectant. However, these costs would be borne by all users of the footspas. All affected small businesses would bear the same costs. The following alternatives were proposed to lessen such adverse economic impact on small businesses and were rejected for the reasons set forth below:

(1) Leave the regulations as they are and simply increase enforcement of the existing regulations.

Reason for rejection:

It is the BBC's responsibility to adopt rules and regulations governing conditions necessary to protect the public health and safety. With outbreaks of infections in the last few years and a death, the BBC must revise the cleaning and disinfecting procedures for footspa equipment. Under the direction of the Governor and the collaborative efforts of the Board with (working group) health officials, consumer groups, equipment manufacturers, other interested parties and the responsibility to protect the public, the proposed regulations are reflective of the most effective cleaning and disinfecting practices to carry out the purpose of the Board. The enforcement of all regulations is conducted to the fullest capacity possible.

(2) Do not specify "Liquid" disinfectant in the proposed language.

Reason for rejection:

The Working Group decided that the liquid disinfectant works best for circulating the solution through the footspa. The Board accepted this rationale. Both the Working Group and the Board determined that the use of a disinfectant of a

powder form might have problems fully dissolving in the water in the appropriate amount of time necessary for the disinfectant to be dispersed prior to a new consumer using the footspa. Although the use of a disinfectant of a tablet form may sanitize the water, the goal is to sanitize, disinfect, and circulate the solution through the entire spa system for proper cleaning of footspa and basin components, not just "the water". Additionally, specifying a "liquid" form of soap and disinfectant mixes faster and saves time. This is common sense. Anyone who has used a powder laundry detergent without pre-dissolving the powder has probably experienced the "caking" of the detergent and residue left on clothes. In the interest of public health and safety, it is necessary for the disinfectant to be in liquid form when dispersed into the footspa.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Although the BBC could have adopted a performance standard mandating the exact amount of pathogens permissible, such a regulatory requirement would be very difficult to economically implement and enforce. A performance standard would require licensees, individually, to determine what exact method of disinfecting to use in order to meet the regulatory standards and would require periodic testing of the water used in the footspa . This would necessitate expensive water quality testing for both licensees and the regulators. Additionally, there would be evidentiary issues with regard to the "chain of custody" of the water samples that were tested. In contrast, a prescriptive standard (delineating the specific procedures for washing and rinsing) was chosen instead. Rather than requiring individual licensees to calculate and determine the exact procedures necessary for adequately disinfecting a footspa according to a performance standard, both the Working Group and the BBC determined it would be better to specify prescriptive standards and procedures that would be easily understood by licensees and clear enough to follow. Various health officials involved with the Working Group advocated prescriptive procedures that adequately disinfect the footspa .

Objections or Recommendations/Responses

Written Comments received during the 45-day comment period.

The following are additional responses to the comments identified in the Final Statement of Reasons. Also, the source of each commentator's comments identified in the Final Statement of Reasons are identified below:

Son Le, email correspondence to BBC staff, 02-26-2007

Board Resonse: The Board is aware that the regulation will necessitate an increase in costs to licensees and salons in mandating an EPA-registered hospital liquid disinfectant. Compared to inexpensive liquid bleach, the cost for the mandated disinfectant appears to be substantial. However, members of the Working Group, including manufactures of footspas, and the BBC determined that liquid bleach is extremely corrosive to the piping elements in the footspa. Overtime, the use of bleach may create nicks and crevices within the pipes. These are typically places where mycobacteria can flourish and jeopardize public health and safety. Although in the short term, the cost of using a liquid disinfectant is certainly greater than using bleach, there is a greater long term cost of pipe and fixture replacement as well as risk of compromising public health. In the interest of public safety, the BBC does not believe this regulation is "overkill." Simply cleaning a tub with detergent and spraying disinfectant as the commentator suggests will not sufficiently disinfect the entire footspa. The objective of this regulations is to sanitize, disinfect, and circulate the solution through the **entire spa system** for proper cleaning of footspa and basin components, not just the visible water or surface of the footspa basin.

Casey Bahr, CEO, Rosanna's Palm Springs Inc., letter of 02-13-2007 to BBC.

Response: Please refer to the BBC response to Son Le, above. The BBC concedes that there will be an adverse economic impact insofar as the costs of providing pedicure services will rise. Nevertheless public health can not be compromised. The fact that the new regulations may potentially be ignored by the some salons and technicians that have always ignored or breached safety standards is no excuse for compromising public safety.

Terri Rollman, Licensee, letter of 01-08-2007 to BBC staff.

Gloria Moore, Licensee, letter of 01-14-12007 to BBC staff.

Lynn Nelson, Salus Per Aquam, Inc., letter of 02-14-2007 to BBC.

John T Sanders, Instructor, Orange County Apprenticeship Training Committee, letter of 1-19-2007 to BBC staff.

Donna Sohr, Licensee, letter of 01-13-2007 to BBC staff.

Fred Jones, Counsel and Lobbyist, Professional Beauty Federation of California, letter of 02-24-2007 to BBC President Tyler.

William Berger Ph.D., President, Sensuous Solutions LLC, letter of 02-27-2007 to BBC, and comments made at the 02-26-2007 BBC Regulation

Hearing.

Board Response: Please refer to the BBC response to Son Le, above. The objective of this regulations is to sanitize, disinfect, and circulate the solution through the **entire spa system** for proper cleaning of footspa and basin components, not just the visible water or surface of the footspa basin. Specifying a “liquid” form of disinfectant ensures that it will mix faster in the water and saves time in order for the disinfectant to be fully dispersed. This is common sense. Anyone who has used a powder laundry detergent without pre-dissolving the powder has probably experienced the “caking” of the detergent and residue left on clothes. In the interest of public health and safety, it is necessary for the disinfectant to be in liquid form when dispersed into the footspa.

Dara Hansen, email correspondence to BBC staff, 02-08-2007.

Board Response: Please refer to the BBC response to Son Le, above. The Working Group discussed bleach and determined that it was too hard on the pipes, parts, and other areas of a footspa. Additionally, the working groups recommendation specified cleaning solutions to be used were “detergent” and liquid “soap”. When a product is labeled “detergent” or “soap”, the compounds contained in each clean a surface in a certain fashion. Therefore, products labeled “detergents” and “soaps” are necessary for the procedure called for in the regulation and thus, meet the pedicure equipment cleaning regulations.

Julie, Licensee, email correspondence to BBC staff, 01-12-2007**Kathy Kessler, Licensee, email correspondence to BBC staff, 01-14-2007.****Ha Nghia, Licensee, email correspondence to BBC staff, 01-16-2007.****Heather Fair, Registrar, Oceanside College of Beauty, email correspondence to BBC staff, 01-20-2007.****Linh Nguyen, Advance Beauty College, email correspondence to BBC staff, 02-01-2007.**

Melissa Shane, email correspondence to BBC staff, 02-18-2007.

Board Response: Both the Working Group and the BBC recommend cleaning solutions that are labeled as “detergent” and liquid “soap”. When a product is labeled “detergent” or “soap”, compounds contained in each product clean a surface in a certain fashion. Therefore, products labeled “detergents” and “soaps” are necessary for the procedure called for in the regulation and thus, meet the pedicure equipment cleaning regulations. A laundry or dishwashing detergent is acceptable so long as the product is labeled as such.

Tien Nguyen, Licensee, email correspondence to BBC staff, 02-02-2007.

John Haase, President, Divina Professional Products, letter to BBC, 02-12-2007.

Board Response: Please refer to response to Son Le above and the discussion of Consideration of Alternatives, above. The Board along with health officials, consumer groups, equipment manufacturers, and other interested parties collaborated and concluded that proposed regulations are reflective of the most effective cleaning and disinfecting practices to carry out the health and safety objectives of the BBC.

The following comments were made at the Regulatory Hearing held on 02-26-2007.

Ajay Sachdeva, Sani Care Salon Products Inc.

Board Response: Please refer to response to Dr. Berger and Mr. Hasse.

Linda Markus, Dental Hygienist

Robert Weaver, Salon Owner, Pinkie's Nail Salon

Board Response: Please refer to response to Casey Bahr, above. . The fact that the new regulations may potentially be ignored by the some salons and technicians that have always ignored or breached safety standards is no excuse for compromising public safety.

The BBC Inspection Unit has put complaints as top priority. A majority of the inspections are done in establishments that have had complaints issued about them. The BBC also inspect establishments in surrounding areas to those salons who have had the complaints issued. As with all of our regulations, it is the licensees’ responsibility to adhere to the regulations and are subject to fines/citations if they are in violation. Additionally, the Board has increased the citation/fines. The new cleaning and disinfecting procedures have been placed on the Health and Safety posters which are supposed to be posted on the wall in all licensed establishments. The enforcement of all regulations is conducted to the fullest capacity possible. The Board is preparing regulations providing for immediate suspensions of licensees who place an immediate threat to the public health and safety.

Tracia Davis, Licensee

Phil Grawey, Business Owner, California Nail and Beauty Supply

John Haase from Divina Products

Necessity:

Section 980.1 is amended to provide specific sequential procedures necessary for cleaning and disinfecting whirlpool footspas and air-jet basins. For many of the BBC licensees, English is not their primary language. It is necessary for the cleaning procedures to be detailed and thorough. The prior regulation was not detailed or clear enough for licensees to follow. Subdivision (b) was added to define an air-jet basin, a commonly used type of footspa. The prior regulation did not mention this type of basin. Subdivision(c) was amended to more clearly specify the exact steps to clean a whirlpool or air-jet basin footspa. Subdivision (c)(2) was added to delineate how the walls of the basin are to be scrubbed. This is necessary to provide specific guidance to licensees so that the basins are cleaned in a consistent manner. Subdivision(c)(5) is necessary to specify the exact type of disinfectant to be used and for how long the water and disinfectant is to be circulated. Subdivision (c)(7) requires recording in a log the date, time of the cleaning and who completed the procedure. This is necessary for the BBC's enforcement purposes and to demonstrate the cleaning history of the footspa. The level of detail for each of the sequential procedures listed is necessary in order for licensees to have clear instruction on the best method of cleaning and disinfecting these type of footspas.

Section 980.2 is added to the regulations in order to define the sequential procedures necessary for cleaning and disinfecting footspas that do not use pipes. The regulation is necessary since this is a different type of footspa than the ones described in section 980.1. Procedures delineated are necessary in order to specify the frequency and type of cleaning procedures required for a clean and safe footspa.

Section 980.3 is added to the regulations in order to define the sequential procedures necessary for cleaning and disinfecting simple foot basins or tubs. Because there are fewer parts to clean and disinfect than the footspas described in 980.1 and 980.2, the cleaning procedures are less cumbersome. Nevertheless, it is necessary to clearly delineate the steps for cleaning, recording and documenting the process.